

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS**  
**AND**  
**MARK BAILEY**

Mark Bailey ("Bailey") and the Missouri State Board of Embalmers and Funeral Directors ("Board") enter into this Settlement Agreement for the purpose of resolving the question of whether Bailey's licenses as an embalmer and funeral director, No. 005979 and No. 004441, respectively, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo Cum. Supp. 2008. The Board and Bailey jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2008.

Bailey acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial

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<sup>1</sup> All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Board at which time Bailey may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Board.

Being aware of these rights provided to him by law, Bailey knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Bailey acknowledges that he has received a copy of documents that were the basis upon which the Board determined there was cause for discipline, along with citations to law and/or regulations the Board believes were violated. Bailey stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Bailey's licenses as an embalmer and funeral director, license No. 005979 and No. 004441, respectively, are subject to disciplinary action by the Board in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2008, and Chapter 333, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Board and Bailey in Part II herein is based only on the agreement set out in Part I herein. Bailey

understands that the Board may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

**I.**  
**Joint Stipulation of Facts and Conclusions of Law**

Based upon the foregoing, the Board and Bailey herein jointly stipulate to the following:

2. The Missouri State Board of Embalmers & Funeral Directors is an agency of the state of Missouri created and existing pursuant to § 333.151, RSMo, for the purpose of executing and enforcing the provisions of Chapter 333, RSMo; portions of Chapter 436, RSMo; and the regulations adopted thereunder.

3. Mark Bailey is a natural person licensed by the Board as an embalmer and funeral director, license nos. 005979 and 004441, respectively. Bailey's licenses are current and active, and were current and active at all material times herein, having been originally issued on or about May 16, 1979.

4. On or about August 8, 2007, Bailey pled guilty to assault in the second degree for operating a motor vehicle while in an intoxicated condition, causing injury to another person. Assault in the second degree is a Class C felony in the state of Missouri under §565.060, RSMo.

5. Section 565.060, RSMo, states in relevant part:

1. A person commits the crime of assault in the second degree if he:

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(4) While in an intoxicated condition or under the influence of controlled substances or drugs, operates a motor vehicle in this state and, when so operating, acts with criminal negligence to cause physical injury to any other person than himself;

\* \* \* \*

3. Assault in the second degree is a Class C felony.

6. On or about October 5, 2007, Bailey received a suspended imposition of sentence and was placed on probation for five years with 15 days of shock jail time.

7. On or about August 6, 2008, Bailey was found to be in violation of his probation when he admitted to consuming whiskey three weeks earlier. The Court continued Bailey's probation and imposed additional terms.

8. On or about January 21, 2009, Bailey's probation was revoked and he was sentenced to seven years incarceration with a suspended execution of sentence and placed on probation for five years with additional treatment terms.

9. On or about May 1, 2009, Bailey submitted applications to the Board to renew his embalmer and funeral director's licenses.

10. Question number seven on the applications for renewal for both licenses stated as follows: "Since your last renewal, have you been arrested for, or subject to prosecution for, or entered a guilty plea of guilty to, or been found guilty of, an offense against the laws of any state or the United States, whether or not sentence was imposed? Please answer "yes"

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even if you received a suspended imposition of sentence (“SIS”) or suspended execution of sentence (“SES”). If yes, attach a full explanation.”

11. Bailey attached the following response to question number seven: “Yes. On or about August 8, 2007, I entered a plea of guilty to the Class C Felony of Assault in the Second-Degree in violation of Section 565.060 in Clinton County, Missouri Case No. 07CN-CR00020-01. I received a suspended imposition of sentence with probation. On January 7, 2009 my probation was revoked. I was placed on probation for a term of five years.”

12. Question number eight on the applications for renewal for both licenses stated as follows: “Since your last renewal, have you been arrested for, or the subject of proceedings regarding, or entered a plea of guilty to, or been found guilty of, conduct that involved the use of alcohol or drugs, whether the proceedings were criminal, civil, or military, and whether or not any sentence was imposed? Please answer “yes” even if you received a suspended imposition of sentence (“SIS”) or suspended execution of sentence (“SES”). If yes, attach a full explanation.”

13. Bailey attached the following response to question number eight: “The proceedings in August of 2007 referenced in my response to Question 7 involved the use of alcohol in that while in an intoxicated condition, I operated a motor vehicle with criminal negligence causing physical injury to a person other than myself.”

14. Title 20 CSR 2120-2.010(22) states: “A Missouri licensed embalmer has the ongoing obligation to keep the board informed if the licensee has been finally adjudicated or

found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, whether or not sentence was imposed. This information shall be provided to the board within thirty (30) days of being finally adjudicated or found guilty.”

15. Title 20 CSR 2120-2.060(28) states: “A Missouri licensed funeral director has the ongoing obligation to keep the board informed if the licensee has been finally adjudicated or found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, whether or not sentence was imposed. This information shall be provided to the board within thirty (30) days of being finally adjudicated or found guilty.”

16. Bailey pled guilty to assault in the second degree on August 8, 2007. Bailey did not inform the Board of his plea until May 1, 2009, when he submitted renewal applications for his licenses. Thus, Bailey failed to provide this information to the Board with 30 days of his guilty plea in a criminal prosecution, in violation of 20 CSR 2120-2.060(22) and (28).

17. Based on the Bailey’s conduct set forth above, including but not limited to his guilty plea to a felony offense in Clinton County, Missouri, cause exists for the Board to discipline Bailey’s licenses pursuant to § 333.121, RSMo, Cum. Supp. 2008, which states in relevant part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate

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of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

\* \* \* \*

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

\* \* \* \*

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

\* \* \* \*

18. Assault in the second degree is an offense reasonably related to good moral character, which is a qualification for licensure as a funeral director. Assault in the second degree also involves moral turpitude, as it represents a gross deviation from the standard of care while driving and demonstrates a lack of respect for the rights of others.<sup>2</sup> Therefore, Bailey's licenses are subject to discipline under § 333.121.2(2), RSMo, Cum. Supp. 2008.

19. Based on Bailey's conduct set forth above, including but not limited to his violations of 20 CSR 2120-2.060(22) and (28), Bailey violated regulations adopted pursuant

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<sup>2</sup> State Bd. of Embalmers & Funeral Dirs. v. Weatherford, No. 02-1303 EM (Mo. Admin. Hearing Comm'n Feb. 11, 2003).

to Chapter 333, RSMo, as amended. Therefore, Bailey's licenses are subject to discipline under § 333.121.2(6), RSMo, Cum. Supp. 2008.

## II.

### **Joint Agreed Disciplinary Order**

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Cum. Supp. 2008.

20. **Bailey's licenses are on probation.** Bailey's licenses as an embalmer and funeral director are hereby placed on PROBATION for a period of FIVE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Bailey shall be entitled to practice as an embalmer and funeral director under Chapter 333, RSMo, as amended, provided Bailey adheres to all the terms of this agreement.

21. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

A. Bailey shall keep the Board apprised at all times of his current address and telephone number at each place of residence and business. Bailey shall notify the Board in writing within ten (10) days of any change in this information.



B. Bailey shall timely renew his licenses, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his licenses in a current and active status.

C. Bailey shall meet in person with the Board or its representative at any such time or place as required by the Board or its designee upon notification from the Board or its designee. Said meetings will be at the Board's discretion and may occur periodically during the probation period.

D. Bailey shall immediately submit documents showing compliance with the requirements of this settlement agreement to the Board when requested by the Board or its designee.

E. During the probationary period, Bailey shall accept and comply with unannounced visits from the Board's representative to monitor compliance with the terms and conditions of this settlement agreement.

F. If at any time during the disciplinary period, Bailey changes his residence from the State of Missouri, ceases to be currently licensed in Missouri under Chapter 333 or Chapter 436, RSMo, as amended, fails to timely pay all fees required for license renewal, or fails to keep the Board advised of all current places of residence and business, the time of absence, unlicensed status, delinquency in paying fees for license renewal or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

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G. Bailey shall comply with all relevant provisions of Chapter 333, RSMo, as amended; Sections 436.400 through 436.525, RSMo; all rules and regulations of the Board, and all state and federal laws related to the performance of duties in the funeral industry. "State" as used herein includes the State of Missouri and all other states and territories of the United States.

H. Bailey and the Executive Director shall submit written reports to the Board by no later than January 1 and July 1 during each year of the Disciplinary Period stating truthfully whether there has been compliance with all terms and conditions of this Settlement.

22. Upon the expiration of the disciplinary period, the licenses of Bailey shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Board determines that Bailey has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Bailey's licenses.

23. No additional discipline shall be imposed by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the Board as a contested case in accordance with the provisions of Chapter 536, RSMo.

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24. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any future violations by Bailey of Chapter 333, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

25. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the Board or may be discovered.

26. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Bailey agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

27. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

28. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

29. The parties to this Settlement Agreement understand that the Board will maintain this Settlement Agreement as an open record of the Board as required by Chapters 333, 610, and 324, RSMo, as amended.

30. Bailey, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Board, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

31. Bailey understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Bailey's licenses. If Bailey desires the

Administrative Hearing Commission to review this Settlement Agreement, Bailey may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

32. If Bailey requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Bailey's licenses. If Bailey does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE

Mark Bailey 2-23-10  
Mark Bailey Date

Missouri State Board of Embalmers and  
Funeral Directors

Becky Dunn  
Becky Dunn, Executive Director  
Date: 3/1/10

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